

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Appl. No.:	09/662,398	Confirmation No.:	1311
Applicant(s):	William F. Harris		
Filed:	September 14, 2000		
Art Unit:	3625		
Examiner:	Amea A. Shah		
Title:	SYSTEM AND METHOD FOR PROCESSING A PRODUCT PRICE OR QUOTATION REQUEST AND PLACING A PRODUCT ORDER VIA A COMMUNICATIONS PROGRAM		

Docket No.: 047802/263904  
Customer No.: 00826

Mail Stop Appeal Brief-Patents  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**REPLY BRIEF UNDER 37 C.F.R. § 1.193**

Sir:

This Reply Brief is filed pursuant to 37 C.F.R. § 1.193(b)(1) and is filed in response to the Examiner's. This brief addresses a number of points arising from the Appeal Brief, as well as the Examiner's Answer to the same.

**10. Response to Argument**

The Examiner's Answer continues to assert that a claim directed to an apparatus must be distinguished from the prior art in terms of structure rather than function. In response, Applicant points to the discussion provided by Section 7 of the Appeal Brief which explains that functional recitations should be evaluated and considered for purposes of determining the patentability of a claim and that in instances in which an Examiner asserts that a prior art reference is capable of performing the functional recitations set forth by the claimed invention, the burden is upon the Examiner to provide a rationale or evidence demonstrating the inherency of the resulting characteristic alleged to be present in the prior art. Indeed, the Examiner's Answer cites *In re Danly*, 263 F.2d 844, 847 (CCPA 1959) in support of the contention that "an apparatus must be

distinguished from the prior art in terms of structure rather than function". See page 6 of the Examiner's Answer. The *Danly* Court did hold that Claims 1 and 2 that included the recitation "such that alternating current may be passed through the tie rod to heat the same" did not "constitute a structural limitation, since an alternating current *may* be passed through the tie rod which is insulated from the press frame." *In re Danly*, 263 F.2d at 847 (emphasis in original). In contrast to the optional recitation that stated that "alternating current may be passed through any tie rod", the *Danly* Court found that phrases employed by the claims such as "for holding" and "for insulating" were included "with the obvious intention of limiting them to actual performance of the stated functions, as distinguished from mere possibility of such performance." As such, the *Danly* Court also held that Claims 3-7 which were drawn to an apparatus and included the phrases "for holding" and "for insulating" should be allowed since these claims "should be construed as being limited to an apparatus in which alternating current is actually applied to the tie rods, and our allowance of those claims is based on that interpretation." *Id.*

The functional recitation set forth by the claims of the present application are analogous to those that were found by the *Danly* Court to define recitations that distinguish the claimed invention from the prior art references and not optional statements, such as "may be", that merely express a possibility. Accordingly, for the reasons set forth by the Appeal Brief as well as those expressed by the *Danly* Court in a decision relied upon by the Examiner's Answer, it is submitted that the dismissal of the functional recitations of the claimed invention without the requisite evidence that the functions were inherent to the Rothman '949 publication is improper.

Turning to the analysis and application of U.S. Published Application No. 2002/0072984 to Glenn Rothman, et al. (hereinafter "the Rothman '984 publication") to Claims 58-76, Applicant continues to submit that the Rothman '984 publication does not teach or suggest independent Claims 58 and 70, as well as the claims which depend therefrom, for at least the reasons set forth by the Appeal Brief. With respect to independent Claim 58, page 7 of the Examiner's Answer alleges that the Rothman '984 publication teaches the receiver component. In this regard, independent Claim 58 recites a server system that includes "a receiver component that receives, on behalf of a manufacturer, requests to order a product from a customer and for

receiving financial authorization from a distributor ...[with the]... financial authorization comprising an acknowledgement from the distributor verifying a customer account even though the request is received by the receiver component in a manner independent of the distributor”.

The Rothman ‘949 publication describes a method and apparatus for the distribution and sale of a brand of product via a seller’s website. The website provides information regarding product availability and pricing and receives orders. If the product is purchased on-line, the purchaser is prompted to enter an address to which the product is to be shipped and the purchaser provides payment for the product, such as by means of a credit card or a credit account financed by the seller or through a third party credit provider. The on-line delivery may then be completed by either the seller or one of its local distributors. Alternatively, in an off-line purchase, the purchaser either may pay the seller for the product via the website, such as by means of a credit card or a credit account established with the seller or a third party credit provider, or may directly pay the distributor when the purchaser is picking up the product from the distributor.

The Examiner’s Answer appears to suggest that the third party credit provider may be the distributor itself such that the distributor would be capable of providing financial authorization to the main server. However, the Rothman ‘984 publication does not teach or suggest that the third party credit provider is or could be the distributor. Indeed, the Rothman ‘984 publication discusses at length the role of the distributor in various scenarios, but does not mention the distributor in conjunction with the provision of financing and, instead, states that the financing “may be provided by the seller, or through a third party credit provider.” See paragraph 94 of the Rothman ‘984 publication. In fact, the distributor only appears to be involved in the payment process in conjunction with an off-line purchase in which the purchaser elects to pay the distributor. In this scenario, the purchaser pays the distributor directly and receives the product from the distributor. Since the purchaser pays the distributor directly in this scenario, there is no credit extended by the seller on behalf of the distributor such that there is no need or reason for the Rothman ‘984 publication to teach or suggest the provision of financial authorization from a distributor to a receiver component operating on behalf of a manufacturer that includes a verification of a customer account as set forth by independent Claim 58. Moreover, in this

scenario, the request to order the product is received directly by the distributor and not by a receiver component operating on behalf of a manufacturer in a manner independent of the distributor as also set forth by independent Claim 58.

For each of the foregoing reasons as well as those detailed by the Appeal Brief, Applicant submits that the Rothman '984 publication does not teach or suggest a receiver component in the manner recited by independent Claim 58.

In response to the submission by the Appeal Brief that the Rothman '984 publication also fails to teach or suggest "an order fulfillment component that completes a purchase of the product in accordance with the order placed by the order placement component including arrangement for shipping by the manufacturer and billing of the distributor", the Examiner's Answer first argues that this recitation is not included in Claim 58 and secondly that this recitation is taught by the Rothman '984 publication. As quoted above, the order fulfillment component of independent Claim 58 recites that the arrangement for shipping by the manufacturer and billing of the distributor is to complete the purchase of the product in accordance with the order placed by the order placement component. Thus, the shipping provided by the manufacturer is the shipping of the product that has been purchased and the billing of the distributor is the billing of the distributor for the product purchased by the customer.

In relation to the recitation that the order fulfillment component includes an arrangement for billing of the distributor, the Examiner's Answer points to paragraph 70 of the Rothman '984 publication for its disclosure of a system whereby distributors can be charged a fee in order to be assigned a particular territory as well as paragraphs 80 and 81 of the Rothman '984 publication which discuss an audit and compensation process. As described, the audit and compensation process determines the sales of the various distributors and their employees and, based upon this determination, provides compensation to the distributors and their employees based upon their performance. As to the fee potentially charged the distributor for the assignment of a territory, the fee in no way reflects the billing of the distributor that is performed to complete the purchase of a product as set forth by independent Claim 58 and is, instead, a general fee that is levied in exchange for a territorial assignment without regard to the purchase of any product at all.

Moreover, the audit and compensation process described by the Rothman '984 publication results in the compensation from the seller to the distributors and their employees and does not result in any billing of the distributor.

Thus, the Rothman '984 publication does not teach or suggest "an order fulfillment component that completes a purchase of the product ... including the arrangement for shipping by the manufacturer and billing of the distributor" as set forth by independent Claim 58 for each of the reasons set forth by the Appeal Brief as well as those highlighted above.

As to independent Claim 70, the server system is defined to include, among other elements, "a commission component that determines a commission and assigns the commission to one of a plurality of agents based on at least one of the plurality of predetermined variables even though the request is received by the receiver component in a manner independent of the agents and even though the request is fulfilled in a manner independent of the agents." With reference to paragraph 45 of the Rothman '984 publication, page 8 of the Examiner's Answer notes that the distributors may receive monetary payments, commissions, bonuses and/or ownership interests in the seller's corporation based upon the level of sales completed by the distributor. The Examiner's Answer then continues by submitting that the Rothman '984 publication discloses the commission component "because it can assign compensation, i.e. commissions, based on ownership interests and/or ranking, which is independent of whether the request is fulfilled by the distributor." See page 9 of the Examiner's Answer.

As to the ownership interest, the ownership interest is a form of compensation as described by paragraph 45 of the Rothman '984 publication. In contrast, the commission component of independent Claim 70 determines and assigns a commission to one of the plurality of agents even though the request is received and is fulfilled in a manner independent of the agents. Thus, the determination of whether the compensation itself, that is, the ownership interest, "is independent of whether the request is fulfilled by the distributor" as submitted by the Examiner's Answer is irrelevant since the commission component of independent Claim 70 recites that it is the receipt of the request by the receiver component and the fulfillment of the request that are performed in a manner independent of the agents and not the form of compensation itself. Moreover, the Rothman '984 patent does not teach or suggest that in

instances in which a request is both received in a manner independent of an agent and fulfilled in a manner independent of the agent that the resulting sale is credited to the distributor's account so as to affect its level of sales as would be required in order to support the position taken by the Examiner's Answer. Instead, the Rothman '984 publication only discloses the involvement of the distributor in instances which the customer elects to pick up the purchased product from a distributor or to purchase a product off-line by proceeding directly to a distributor. In neither of these situations is the request fulfilled in a manner independent of the agent as recited by independent Claim 70, but the request is, instead, fulfilled by the distributor. Moreover, in those instances in which a request for a product is made of the central server and the order is fulfilled by the manufacturer without involving the distributor, the Rothman '984 publication does not teach or suggest that the distributor is included in the transaction whatsoever such that the transaction does not affect the level of the sales of the distributor and, in turn, does not affect any commission or other compensation paid to the distributor.

For those reasons set forth by the Appeal Brief as well as those highlighted above, it is submitted that the Rothman '984 publication does not teach or suggest the server system of independent Claim 70.

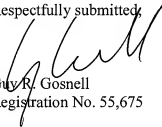
Since the dependent claims include each of the recitations of a respective independent claim, it is therefore also submitted that the claims which depend from independent Claims 58 and 70 are also not taught or suggest by the Rothman '984 publication for at least the same reasons as described above in conjunction with the respective independent claims.

Appl. No.: 09/662,398  
Reply Brief dated November 6, 2006  
Reply to Examiner's Answer mailed September 6, 2006

**CONCLUSION**

For at least the foregoing reasons, as well as those presented in the Appeal Brief, Applicant respectfully requests that the rejections be reversed.

Respectfully submitted,



Guy R. Gosnell  
Registration No. 55,675

**Customer No. 00826**  
**ALSTON & BIRD LLP**  
Bank of America Plaza  
101 South Tryon Street, Suite 4000  
Charlotte, NC 28280-4000  
Tel Charlotte Office (704) 444-1000  
Fax Charlotte Office (704) 444-1111

ELECTRONICALLY FILED USING THE EFS-WEB ELECTRONIC FILING SYSTEM OF  
THE UNITED STATES PATENT & TRADEMARK OFFICE ON November 6, 2006 by Gwen Frickhoeffer.

LEGAL02/30146073v1